

Tax Bulletin

March 2017



Highlights

BIR Rulings

- ▶ Gifts made to or for the use of an entity created by agencies of the National Government, which is not conducted for profit, are exempt from donor's tax. **(Page 4)**
- ▶ The importation of equipment, which are directly and exclusively used for the projects, undertakings, activities and programs of the Armed Forces of the Philippines (AFP), shall only be exempt from VAT if the importation is done by the AFP. **(Page 5)**
- ▶ The importation of passenger or cargo vessels for domestic transport operations shall be exempt from VAT, subject to the requirements on the restrictions on vessel importation and mandatory vessel retirement program of the Maritime Industry Authority (MARINA). **(Pages 5)**
- ▶ Landowners who receive just compensation for the conversion of their real properties into public roads are subject to capital gains tax (CGT). **(Page 6)**
- ▶ The Landbank is subject to CGT and DST (Documentary Stamp Tax) on its acquisition of real properties classified as capital assets or the Agrarian Reform Fund - Real and Other Properties Acquired (ARF-ROPAs). **(Page 6)**
- ▶ Private project contractors participating in socialized housing are exempt from the payment of project-related income taxes, CGT and VAT. **(Page 7)**

BIR Issuances

- ▶ Revenue Regulations (RR) No. 4-2017 amends certain provisions of RR No. 2-2016, specifically on the conditions for the exemption of recognized international organizations and foreign embassies from the requirement of securing an Authority to Release Imported Goods (ATRIGs) on imported automobiles. **(Page 7)**
- ▶ Revenue Memorandum Order (RMO) No. 8-2017 prescribes the new procedure for claiming preferential tax treaty benefits on dividend, interest and royalty income, amending for this purpose RMO No. 72-2010. **(Page 8)**
- ▶ Revenue Memorandum Circular (RMC) No. 18-2017 circularizes Memorandum No. 008-2017 regarding the issuance of a Certificate of Tax Exemption (CTE) to Service Cooperatives. **(Page 10)**
- ▶ RMC No. 23-2017 prescribes a new Value-Added Tax (VAT) Exemption Identification Card (VEIC) for Qualified Diplomats, Officials and Dependents of the US Embassy. **(Page 10)**
- ▶ RMC No. 24-2017 prescribes the addendum to RMC No. 14-2017 on the Temporary Suspension of Enrollment to the Electronic Filing and Payment System (eFPS). **(Page 11)**

- ▶ RMC No. 27-2017 clarifies the basis for the imposition of tax on the sale, exchange or other disposition of real property. **(Page 11)**
- ▶ RMC No. 28-2017 prescribes the guidelines in the filing, receiving and processing of 2016 Income Tax Returns, including their attachments. **(Page 12)**

BSP Issuances

- ▶ Circular No. 947 provides for the Supervisory Policy on Granting of a License/ Authority. **(Page 14)**
- ▶ Circular No. 948 amends certain provisions of the Manual of Regulations for Banks (MORB) as of 30 September 2016. **(Page 15)**
- ▶ Circular No. 949 provides for the Guidelines on Social Media Risk Management. **(Page 16)**
- ▶ Circular No. 950 provides for the amendments to Part Eight or the Anti-Money Laundering Regulations of the Manual of Regulations for Banks (MORB) and Manual of Regulations for Non-Bank Financial Institutions (MORNBFI). **(Page 16)**
- ▶ Circular No. 951 provides for the Guidelines on Business Continuity Management. **(Page 18)**
- ▶ Circular No. 952 provides for the Disclosure of Domestic Remittance Charges by All BSP Supervised Entities with Domestic Remittance Transactions. **(Page 18)**

SEC Issuances

- ▶ SEC MC No. 2 provides the schedule for the filing of 2017 annual reports of corporations registered with the SEC. **(Page 19)**
- ▶ SEC MC No. 3, series of 2017, as approved by the Department of Finance, adopts a revised consolidated schedule of fees and charges to be imposed by the SEC. This MC amends SEC MC No. 9 series of 2004. **(Page 20)**
- ▶ SEC MC No. 4, series of 2017, adopts a new term limit for Independent Directors of all listed, public and mutual fund companies. **(Page 21)**
- ▶ SEC MC No. 5, series of 2017, updates the *pro forma* Certification required from all Independent Directors. **(Page 21)**
- ▶ SEC MC Circular No. 6, series of 2017, provides for the Guidelines on the Submission of Annual Report of Broker Dealers on the measures it has taken to enforce the Rules on Segregation of Functions (otherwise known as the “Chinese Wall Rules”) under Rule 34.11 of the 2015 Implementing Rules and Regulations of the Securities Regulation Code (SRC). **(Page 21)**

PEZA update

- ▶ The PEZA People’s Freedom of Information Manual provides for the procedure in requesting for information from PEZA. **(Page 22)**

BLGF Opinions

- ▶ A company is not required to secure a business permit from a city where it does not have any branch office, sales outlet, or warehouse, and its employees' presence therein is temporary and merely to fulfill its contractual obligation to its clientele.

A business permit fee is a regulatory fee imposed and collected for regulating, inspecting, and issuing licenses; such regulation and inspection cannot be done when the entity to be regulated and inspected has no branch office, sales outlet, or warehouse in said area to begin with. **(Page 23)**

- ▶ Assessment of real property tax should be made effective the year following the issuance of the Certificate of Occupancy permit. **(Page 24)**

Court Decisions

- ▶ If a taxpayer did not receive a final decision on its protest against the Final Assessment Notice (FAN), a Preliminary Collection Letter from the BIR reiterating the demand to pay the deficiency tax assessment previously made is deemed the final decision that is appealable to the Court of Tax Appeals (CTA).

A deposit for future subscription of shares of stock is not subject to DST as there is no stock subscription yet that creates rights and obligations between the subscriber and the corporation. **(Page 24)**

- ▶ To determine the fair market value of unlisted shares of stock, the audited financial statements duly certified by an independent public accountant "nearest to the date of sale" shall be utilized.

In a *bona fide* sale transaction where the fair market value of the shares of stock is lower than the consideration, no donor's tax is due. If donor's tax was paid, the erroneously paid tax can be subject to a refund. **(Page 25)**

BIR Rulings

BIR Ruling No. 059-2017 dated 17 February 2017

Gifts made to or for the use of an entity created by agencies of the National Government, which is not conducted for profit, are exempt from donor's tax.

Facts:

The International Rice Research Institute (IRRI) executed a Deed of Donation in favor of the Land Transportation Office (LTO) for the conveyance of two used vehicles.

Issues:

1. Is the donation exempt from donor's tax?
2. Is the donation subject to DST?
3. Is the LTO liable to pay the VAT and excise tax due on the transaction?

Ruling:

1. Yes. Since the donation is made to or for the use of the LTO, which is a government institution created under the Department of Transportation and Communications, such donation is exempt from donor's tax pursuant to Sections 101 (A) (2) and 101 (B) (1) of the Tax Code.

2. Yes. It is subject to the DST of P15.00 on Certificates imposed under Section 188 of the Tax Code.
3. If the previous purchase of the subject vehicles by the IRRI was exempted from VAT and excise tax, the LTO, not being exempt from the same, shall pay such VAT and excise tax due on the transaction pursuant to Section 107 (B) of the Tax Code and Section 8 of RR No. 25-2003, respectively.

BIR Ruling No. 060-2017 dated 17 February 2017

The importation of equipment, which are directly and exclusively used for the projects, undertakings, activities and programs of the AFP, shall only be exempt from VAT if the importation is done by the AFP.

Facts:

A Co., a domestic corporation, imported several pieces of equipment from Malaysia. A Co. agreed to sell the equipment to the AFP for use in the latter's Radio Communication Equipment Acquisition Project.

Issue:

Is the importation exempt from VAT?

Ruling:

No. While A Co.'s sale of equipment to the AFP, for direct and exclusive use in the AFP's project, shall be exempt from VAT, A Co.'s prior importation of the said equipment is subject to VAT under Section 107 of the Tax Code. Under the Revised AFP Modernization Act, the importation of equipment, which are directly and exclusively used for the projects, undertakings, activities and programs of the AFP, shall only be exempt from the VAT if the importation is done by the AFP.

BIR Ruling No. 101-2017 dated 3 March 2017

The importation of passenger or cargo vessels for domestic transport operations shall be exempt from VAT, subject to the requirements on the restrictions on vessel importation and mandatory vessel retirement program of the MARINA.

Facts:

B Co., a domestic shipping company, imported one brand new roll on, roll off (Ro-Ro)-type passenger ferry ship. The importation was approved by the MARINA through an authority to import.

Issue:

Is the importation exempt from VAT?

Ruling:

Yes. Considering that B Co. was given an authority to import by the MARINA, its importation of the vessel is deemed compliant with the MARINA's requirements on the restrictions on vessel importation and mandatory vessel retirement program. Accordingly, the importation is exempt from VAT pursuant to Section 109 (1) (T) of the Tax Code, as implemented by RR No. 16-2005, as amended by RR No. 15-2015.

Landowners who receive just compensation for the conversion of their real properties into public roads are subject to CGT.

BIR Ruling No. 102-2017 dated 3 March 2017

Facts:

The City Government of Pasig, through its City Council, enacted a resolution authorizing the Mayor to pay just compensation to several landowners for the acquisition of their real properties to be converted into a public road. The landowners claimed a CGT exemption.

Issue:

Are the landowners exempt from CGT?

Ruling:

No. There is no legal basis for a CGT exemption. For purposes of computing the CGT, the tax base shall be the gross selling price or the current fair market value of the real property as determined in accordance with Section 6 (E) of the Tax Code, whichever is higher.

The Landbank is subject to CGT and DST on its acquisition of real properties classified as capital assets or the ARF-ROPAs.

BIR Ruling No. 117-2017 dated 10 March 2017

Facts:

The Land Bank of the Philippines (Landbank) acquired certain real properties classified as capital assets or the ARF-ROPAs. The acquisition was made through legal proceedings or foreclosure sales as settlement for uncollected ARF-funded loans of farmers-borrowers.

Issue:

1. Is the transaction subject to CGT and DST?
2. Can the Landbank claim exemption from taxes?

Ruling:

1. Yes. Under Section 2 of RR No. 9-2012, in case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgages/selling persons or entities, the CGT imposed under Sections 24 (D) (1) and 27 (D) (5) of the Tax Code, if the property is a capital asset, and the DST imposed under Section 196 of the same Code, shall become due.
2. No. While the applicable taxes due on the sale of the real property are for the account of the delinquent real property owners, it is the buyer, as the statutory seller of the delinquent property, which shall file the necessary tax returns and pay the applicable taxes due thereon. The Landbank cannot invoke the tax exemption of the ARF or its own tax exemption, if any, because the taxes due on a foreclosure sale or forfeiture are levied on the delinquent property owners, and not on the ARF or upon itself.

BIR Ruling No. 120-2017 dated 16 March 2017

Private project contractors participating in socialized housing are exempt from the payment of project-related income taxes, CGT and VAT.

Facts:

The National Housing Authority (NHA) issued a Notice of Award to A Co. for the construction of medium rise buildings and land development under a socialized housing project. The project is intended for the use of underprivileged and homeless families.

Issue:

Is A Co. entitled to tax incentives?

Ruling:

Yes. Under Section 20 of RA No. 7279 or the Urban Development and Housing Act of 1992, private sectors who participate in socialized housing projects are exempt from project-related income taxes, CGT on raw lands used for such projects and VAT. However, the project contractor's purchases of goods or articles shall be subject to VAT, even if said purchases are meant to be used in the project.

BIR Issuances

RR No. 4-2017 amends certain provisions of RR No. 2-2016, specifically on the conditions for the exemption of recognized international organizations and foreign embassies from the requirement of securing an ATRIGs on imported automobiles.

RR No. 4-2017 issued on 7 March 2017

- ▶ Where automobiles are imported by recognized international organizations or foreign embassies and subsequently sold, transferred, or exchanged in the Philippines to a non-exempt person or entity, the purchaser, transferee, owner or possessor of the automobile shall be considered as the importer and shall be liable for the excise tax due on such importations.
- ▶ The same rule shall apply in cases where automobiles intended for exclusive use within the Freeport zones are introduced and re-introduced into the Philippine customs territory.
- ▶ Foreign embassies and recognized international organizations shall secure a one-time ruling from the International Tax Affairs Division (ITAD) of the BIR, confirming the exemption from the ATRIG of the importation of automobiles by such organizations or embassies.
- ▶ The one-time BIR ruling shall be presented to the Bureau of Customs (BOC) prior to release of imported automobiles from customs custody.
- ▶ An annual report of all importations shall be submitted by the said embassies or organizations to the Excise LT Regulatory Division (ELTRD) of the BIR not later than the 5th day of January of the following year.
- ▶ These regulations shall take effect immediately.

(Editor's Note: RR No. 4-2017 was published in the Manila Bulletin on 8 March 2017)

RMO No. 8-2017 prescribes the new procedure for claiming preferential tax treaty benefits on dividend, interest and royalty income, amending for this purpose RMO No. 72-2010.

RMO No. 8-2017 issued on 28 March 2017

- ▶ The filing of a Tax Treaty Relief Application (TTRA) is no longer required in order to avail of treaty relief for dividends, interest and royalties.
- ▶ For any other type of income, such as business profits, income from services, *et. al*, a TTRA is still required to be filed, and the provisions of RMO No. 72-2010 shall continue to apply.
- ▶ The reduced tax rate of 15% on intercorporate dividends paid to non-resident foreign corporations under Section 28 (B)(5)(b) of the Tax Code shall be covered by a separate issuance.
- ▶ The following terms are defined under the RMO:
 1. **Non-residents** - those who are not residents nor citizens of the Philippines. They are further classified as:
 - ▶ **Non-resident alien not engaged in trade or business (NANETB)** - those whose aggregate period of stay in the Philippines does not exceed 180 days during any calendar year.
 - ▶ **Non-resident foreign corporations (NRFC)** - corporations organized under foreign laws and not engaged in trade or business in the Philippines.
 2. **Beneficial Owner** - refers to the recipient of dividend, interest or royalty income that has the right to use and enjoy the said income without any obligation imposed by law or contract to pass it on to another person.
 3. **Certificate of Residence for Tax Treaty Relief (CORTT) Form** - the new BIR Form to be used for tax treaty relief application for dividend, interest and royalty incomes. This form has 2 parts:
 - ▶ Part I
 - a. Applicable Tax Treaty
 - b. Information of Income Recipient or Beneficial Owner (Individual)
 - c. Information of Income Recipient or Beneficial Owner (Non-Individual)
 - d. Certification of Competent Authority of Authorized Tax Office of Country of Residence
 - ▶ Part II
 - a. Information of Withholding Agent or Income Payor
 - b. Details of Withholding of Tax
 - c. Type of Income Earned within the Philippines in Respect to which Relief is Claimed
 - d. Declaration of Income Recipient of Beneficial Owner
 - e. Declaration of Withholding Agent or Income Payor.

4. **Competent Authority (CA)** - refers to a person from the taxing jurisdiction of a treaty partner who is authorized to certify residency of non-resident income earners for tax treaty purposes.
- ▶ Instead of filing a TTRA, the following procedure shall now apply in order to claim treaty benefits for dividends, royalty or interest:
 1. Non-resident income earners are now required to submit a duly-accomplished CORTT Form or the prescribed certificate of residency of their country of residence, together with the CORTT Form, to their withholding agents/ income payors before income is paid or credited.
 2. The withholding agent/ income payor shall file BIR Forms 1601-F and 1604-CF and pay the corresponding withholding taxes on such dividend, interest or royalty.
 3. Within 30 days after payment of withholding taxes due on the dividend, interest and royalty, the withholding agent/ income payor shall submit an original copy of the CORTT Form or the prescribed certificate of residency, together with the CORTT Form, to the International Tax Affairs Division (ITAD) and Revenue District Office (RDO) No. 39.
 4. Within the same period, the withholding agent/ income payor shall submit an updated Part II of the CORTT Form, reflecting payment of withholding taxes, in the following cases:
 - ▶ If the CORTT Form filed with the ITAD and RDO No. 39 is used for another dividend payment within the prescribed period of validity; and
 - ▶ In case of the staggered payment of interest and royalty income.
 - ▶ The CORTT Form, which shall serve as proof of residency of the non-residents, replaces the old BIR Form O901 intended for TTRA for dividend, interest and royalty and shall be valid as follows:
 1. For dividend income purposes, the CORTT Form shall be valid for two years from date of issuance and if a prescribed certificate of residency of the country of residence is used, the date of validity of the latter document will prevail over the two-year period.
 2. For interest and royalty purposes, the CORTT Form shall be valid per contract.
 - ▶ The non-resident and/or the withholding agent is considered non-compliant and, thus, ineligible to avail the preferential tax treaty rates or tax exemption based on any of the following:
 1. Non-compliance with the requirements of the tax treaty provision being invoked
 2. Non-filing of BIR Form 1601-F or 1604-CF and non-payment of withholding taxes due
 3. Discrepancy between the information contained in the CORTT Form and 1601-F

- ▶ Non-compliance shall be a ground for the disallowance of the pertinent expenses of the withholding agent.
- ▶ Non-residents who already filed TTRAs with the BIR on dividend, interest and royalty income prior to the effectivity of the RMO will be allowed to use the tax treaty rates, but the same will be subject to a compliance check during the BIR's regular audit.
- ▶ This Order shall take effect after 90 days upon signing.

(Editor's Note: RMO No. 8-2017 was released by the Commissioner's Office on 28 March 2017)

RMC No. 18-2017 circularizes Memorandum No. 008-2017 regarding the issuance of CTE to Service Cooperatives.

RMC No. 18-2017 issued on 1 March 2017

- ▶ Under a Memorandum dated 24 February 2015, former Commissioner Kim S. Jacinto-Henares directed the BIR officials to refrain from issuing CTE to cooperatives not specifically identified under RA No. 9520, i.e. labor contracting, professionals, construction, mining and other cooperatives similarly created.
- ▶ Likewise, under RMC No. 12-2012, the BIR circularized the directive of the Cooperative Development Authority (CDA) to its Regional Directors to refrain from registering service cooperatives.
- ▶ Given the above position taken by the BIR on service cooperatives, the Deputy Commissioner of the Legal Group issued Memorandum 008-2017, seeking clarification from the Commissioner of Internal Revenue and at the same time, taking the position that tax incentives provided under Republic Act (RA) No. 9520 may be granted to service cooperatives, which have been duly registered with the Cooperative Development Authority (CDA).
- ▶ In the same memorandum, the Commissioner approved the position of the Deputy Commissioner of the Legal Group that service cooperatives must not be totally prohibited from availing of the tax incentives provided under RA No. 9520, provided that they are duly registered with the CDA and have been issued Certificates of Good Standing to show that they are *bona fide* cooperatives falling under RA No. 9520.
- ▶ The service cooperatives will also be subject to post audit verification to check on whether they are just being used as a tax shield to avoid or evade tax payment.
- ▶ Thus, service cooperatives that fully comply with the CDA guidelines may be issued a CTE provided they also submit the documents required by the BIR under RMO No. 76-2010.

RMC No. 23-2017 prescribes a new VEIC for Qualified Diplomats, Officials and Dependents of the US Embassy.

RMC No. 23-2017 issued on 7 March 2017

- ▶ Pursuant to RMO No. 22-2004, the BIR currently issues VEICs to the US Embassy's qualified personnel and their qualified dependents.

- ▶ The BIR has received reports that the use of the VEIC on personal purchase of goods and services by the holders has caused confusion among business establishments due to the existing layout of the card, which appears to be issued by the US Embassy rather than the BIR.
- ▶ The BIR has, therefore, revised the layout for the VEIC. A template of the VEIC was attached as Annex "A" of RMC No. 23-2017.
- ▶ All VEICs duly issued before the issuance of this RMC shall remain valid until their expiry dates.

RMC No. 24-2017 prescribes the addendum to RMC No. 14-2017 on the Temporary Suspension of Enrollment to eFPS.

RMC No. 24-2017 issued on 8 March 2017

- ▶ Taxpayers required to secure the BIR Importer's Clearance Certificate (ICC), Broker's Clearance Certificate (BCC) and Government Bidder's Tax Clearance are exempted from the provisions of RMC No. 14-2017, suspending eFPS enrollment during the period of March 1 to April 30 of every year.
- ▶ The Revenue District Office (RDO) shall continue to process eFPS applications of the said taxpayers and shall activate their accounts immediately upon verification of the completeness of documents submitted.
- ▶ The taxpayer shall receive an auto-email notification or confirmation of successful eFPS enrollment.
- ▶ Taxpayers, who successfully enrolled or activated to eFPS, shall file their tax returns through eFPS facility.
- ▶ Taxpayers who do not receive an auto-email notification or confirmation of successful eFPS enrollment or activation within 24 hours upon enrollment, shall file their tax returns through the eBIRForms facility until such time that they receive the auto-email notification or confirmation from the BIR.
- ▶ The conditions under this RMC shall apply only for the duration of the suspension of eFPS enrollment from March 1 to April 30 of every year.

RMC No. 27-2017 clarifies the basis for the imposition of tax on the sale, exchange or other disposition of real property.

RMC No. 27-2017 issued on 28 March 2017

- ▶ The capital gains tax/income tax/withholding tax on the sale, exchange or other disposition of real property shall be based on the gross selling price or current fair market value (FMV) as determined under Section 6(E) of the Tax Code, whichever is higher.
- ▶ The FMV of the property shall be the FMV as determined by the Commissioner or the FMV as shown in the schedule of values of the Provincial and City Assessors, whichever is higher.
- ▶ Revenue officials or employees shall not apply any basis (such as comparative sales) other than those mentioned above for the imposition of the tax on the sale, exchange or other disposition of real property.

RMC No. 28-2017 prescribes the guidelines in the filing, receiving and processing of 2016 Income Tax Returns, including their attachments.

RMC No. 28-2017 issued on 30 March 2017

- ▶ Considering that April 15, 2017 falls on a Black Saturday, all Income Tax Returns (ITRs) and their attachments are due on 17 April 2017. For taxpayers covered by fiscal year, the same is due on the 15th day of the fourth month following the close of the fiscal year.
- ▶ Taxpayers shall file and pay in accordance with the following guidelines:

Manner of Filing	Where to File and Pay	Required Attachments	
		Where to Submit	When to Submit
A. With Payment			
1. Manual Filing	<ul style="list-style-type: none"> ▶ Authorized Agent Bank (AAB) located within the territorial jurisdiction of the Revenue District Office (RDO) where the taxpayer is registered. ▶ If there are no AABs, the return shall be filed and the tax shall be paid to the Revenue Collection Officer (RCO) under the jurisdiction of the RDO. ▶ For mobile payments, payment can be made using GCash and the return shall be filed with the RDO where the taxpayer is registered 	<ul style="list-style-type: none"> ▶ AAB ▶ RDO ▶ RDO 	Upon filing
2. eFPS Facility	<p>Prepare ITR using eBIRForms Package and submit and pay using eFPS facility; or</p> <p>File and pay directly using eFPS AABs/facility</p>	Concerned Large Taxpayer Division (LTD)/RDO	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later

Manner of Filing	Where to File and Pay	Required Attachments	
		Where to Submit	When to Submit
3. eBIRForms Package	<p>Electronically file using eBIRForms Package and pay to any of the following:</p> <ul style="list-style-type: none"> ▶ AAB located within the territorial jurisdiction of the RDO where the taxpayer is registered ▶ In places where there are no AABs, the return shall be filed and the tax shall be paid to the concerned RCO under the jurisdiction of the RDO ▶ For mobile payments, payment can be made using GCash and the return shall be filed with the RDO where the tax payer is registered 	<ul style="list-style-type: none"> ▶ AAB ▶ RDO ▶ RDO 	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later
B. No Payment Returns			
1. eFPS Facility	<ul style="list-style-type: none"> ▶ Prepare ITR using eBIRForms Package and submit using eFPS AABs/ facility, or ▶ File directly using eFPS facility 	Concerned LTD/RDO	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later
2. eBIRForms Package	Electronically file using eBIRForms Package	RDO	Within 15 days from the deadline of filing or date of electronic filing of the return, whichever comes later

- ▶ In lieu of the officially printed forms, BIR official printed forms or photocopied or electronic/ computer-generated income tax returns shall be accepted provided that the said forms are originally filled out and signed by the taxpayer or his duly authorized representative.
- ▶ The following may manually file "No Payment Returns" with the RDO where they are registered, using officially printed forms/photocopied or electronic/ computer-generated returns:
 1. Senior Citizen (SC) or Persons with Disabilities (PWDs) filing for their own return

2. Employees deriving purely compensation income from two or more employers during the taxable year, or from a single employer, but whose spouse is not entitled to substituted filing
 3. Employees qualified for substituted filing under RR No. 2-98, but who opted to file for an ITR and are filing for purposes of promotion, loans, scholarship, foreign travel requirement, etc.
- ▶ Taxpayers who electronically filed and/or paid ITRs using eBIRForms or eFPS, without attachments required, need not submit a printed copy of e-Filed tax returns to the LTD/RDO.
 - ▶ Within 15 days after the electronic filing of the return, the taxpayer shall submit a signed copy of the electronically filed ITR with Filing Reference Number (FRN) or an email Tax Return Receipt Confirmation, as well as the required attachments.
 - ▶ If applicable, the Summary Alphalist of Withholding Tax (SAWT) using BIR's Data Entry Module shall be emailed to esubmission@bir.gov.ph.
 - ▶ Three copies of the returns shall be stamped "RECEIVED", but excess copies shall not be stamped.
 - ▶ In case of corporations, at least two extra copies of the Audited Financial Statements (AFS) shall be stamped "RECEIVED" for filing with the Securities and Exchange Commission (SEC).
 - ▶ The attached AFS shall be stamped only on the page of the Audit Certificate, Statement of Financial Position, Statement of Comprehensive Income, and Statement of Management's Responsibility.
 - ▶ The disclosure of Supplemental Information under BIR Form Nos. 1700 and 1701 is optional for individual taxpayers filing ITR covering the period starting calendar year (CY) 2016.

BSP Issuances

Circular No. 947 provides for the Supervisory Policy on Granting of a License/Authority.

BSP Circular No. 947 dated 15 February 2017

- ▶ The Monetary Board, in its Resolution No. 201 dated 2 February 2017, approved the enhanced Supervisory Policy on Granting of a License/Authority of the Bangko Sentral ng Pilipinas (BSP) to strengthen and align its screening function with international standards and to rationalize and standardize the licensing process of the Supervision and Examination Sector, BSP.
- ▶ Sections X1101/41101Q/4501S/4501P/4110N/4201T on the Licensing Policy of BSP are added to the MORB/MORNBF1.
- ▶ Subsections X1101.1/41101Q.1/4501S.1/4501P.1/4110N.1/4201T.1 provide for the different categories of applications for licenses and/or authorities.
- ▶ Subsections X1101.2/41101Q.2/4501S.2/4501P.2/4110N.2/4201T.2 provide for the prudential criteria to be used in determining the eligibility of applicants to the licenses and/or authorities granted by BSP.

- ▶ Subsections X1101.3/41101Q.3/4501S.3/4501P.3/4110N.3/4201T.3 provide for the enforcement actions by BSP to ensure that grantees of licenses/ authorities are and remain qualified to possess the same, bring about timely corrective actions and compliance with Bangko Sentral directives and provide safety to depositors, creditors, other stakeholders as well as the public in general.
- ▶ This Circular shall take effect 15 calendar days after its publication either in the official Gazette or in a newspaper of general circulation.

[Editor's Note: BSP Circular 947 was published in The Philippine Star on 28 February 2017.]

Circular No. 948 amends certain provisions of the Manual of Regulations for Banks as of 30 September 2016.

BSP Circular No. 948 dated 1 March 2017

- ▶ The Monetary Board, in its Resolution No. 276 dated 16 February 2017, approved the following amendments to the Manual Regulations for Banks as of 30 September 2016.
- ▶ The implementing date of new check clearing process as prescribed in the Memorandum No. M-2016-012 (Clearing of Checks via Electronic Presentment) dated 08 September 2016 is codified as a footnote to Section X206 as follows:

“Section X206 (2008-X603) Clearing Operations. The Philippine Clearing House Corporation (PCHC) x x x . It shall implement Clearing of Checks via Electronic Presentment through its Check Image and Clearing System (CICS) upon receipt by the Bangko Sentral of a written notice from PCHC that CICS is operational.¹

¹ The new check clearing process shall be implemented on 20 January 2017.”

- ▶ The effective date of the revised rediscount rates under Circular No. 916 dated 08 July 2016 is codified as a footnote to Subsection X269.6 as follows:

“Subsection X296.6 Rediscount/Lending rates and liquidated damages.

The rediscount rates for peso, dollar and yen shall be, as follows:

- a. Peso Rediscount¹
x x x
- b. Dollar/Yen Rediscounts
x x x
Past due x x x per annum²

¹ These peso rediscount rates shall take effect on 25 July 2016.

² See Appendix 89 x x x “

- ▶ The Sworn Certification on Lending to Local Government Units/Borrowing Government Entities as required report under Circular No. 926 dated 13 September 2016 is codified in Appendix 6.

(Editor's Note: BSP Circular No. 948 was published in the Manila Standard on 7 March 2017)

Circular No. 949 provides for the Guidelines on Social Media Risk Management.

BSP Circular No. 949 dated 15 March 2017

- ▶ The Monetary Board, in its Resolution No. 333 dated 23 February 2017, approved the following: (i) adoption of guidelines on social media risk management for Bangko Sentral ng Pilipinas (BSP)-supervised financial institutions (BSFIs); and (ii) the corresponding amendments to the MORB and MORNBFI.
- ▶ Sections X183/4183Q/4183N/4195P/4198S/4177T on Social Media Risk Management; Policy Statement are added to MORB or MORNBFI.
- ▶ Subsections X183.1/4183Q.1/4183N.1/4195P.1/4198S.1/4177T.1 provide for the applicability and scope of the guidelines on Social Media Risk Management. These provide that the guidelines shall apply to all BSFIs which include banks, non-banks with quasi-banking function (NBQB), non-bank electronic money issuers, and other nonbank institutions which under existing Bangko Sentral rules and regulations and special laws are subject to Bangko Sentral supervision and/or regulation.
- ▶ Subsections X183.2/4183Q.2/4183N.2/4195P.2/4198S.2/4177T.2 provide for the definition of terms.
- ▶ Subsections X183.3/4183Q.3/4183N.3/4195P.3/4198S.3/4177T.3 provide that BSFIs should establish an appropriate framework that will result in sound social media governance and risk management. The elements for such framework are provided in the same subsection.
- ▶ Subsections X183.4 /4183Q.4/4183N.4/4195P.4/4198S.4/4177T.4 provide that the BSFIs, in formulating and implementing their social media policies, should ensure compliance with relevant regulations.
- ▶ Subsections X183.5/4183Q.5/4183N.5/4195P.5/4198S.5/4177T.5 provide that the BSFIs should make available all policies and procedures and other documents/information related to the foregoing during the on-site examination as well as provide copies thereof when a written request is made to determine compliance. The same subsections provide for the supervisory enforcement actions of the Bangko Sentral.
- ▶ A footnote on Sections X183/4183Q/4183N/4195P/4198S/4177T on Social Media Risk Management provides for the transitory provision. It provides that BSFIs shall comply with the foregoing standards on social media risk management within a period of 6 months from the effectivity of this issuance.
- ▶ This Circular shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

[Editor's Note: BSP Circular 949 was published in Business World on 20 March 2017.]

Circular No. 950 provides for the amendments to Part Eight or the Anti-Money Laundering Regulations of the MORB and MORNBFI.

BSP Circular No. 950 dated 15 March 2017

- ▶ The Monetary Board, in its Resolution No. 334 dated 23 February 2017, approved the following amendments to Part Eight or the Anti-Money Laundering Regulations of the MORB and MORNBFI.
- ▶ Sections X801/4801Q provide for the amended Declaration of Policy and Sections X802/4802Q provide for the amended Scope of Regulations.

- ▶ Sections X803/4803Q provide for the amended definition of terms.
- ▶ Sections X805/4805Q and their subsections which provide that all covered institutions shall develop sound risk management are also amended.
- ▶ Sections X806/4806Q which provide for the conduct of customer due diligence are also amended.
- ▶ Subsections X806.1/4806Q.1 on customer acceptance and identification policy as well as Subsections X806.2/4806Q.2 on customer identification are also amended.
- ▶ Subsections X806.3/4806Q.3 which provide for the on-going monitoring of customers, accounts and transactions are also amended.
- ▶ Subsections X806.4/4806Q.4 on non-discrimination against certain types of customers shall be incorporated.
- ▶ Sections X807/4807Q and their subsections which provide for the Covered and Suspicious Transaction Reporting are also amended.
- ▶ Sections X808/4808Q and their subsections which provide for record keeping, retention of records and form of records are also amended.
- ▶ Sections X810/4810Q which provide for the Bangko Sentral Authority to check compliance with the AMLA are also amended.
- ▶ The first four paragraphs of Section X811/4811Q shall be amended and a new paragraph on escalation of enforcement action is incorporated before the provisions on monetary guidelines.
- ▶ The following Sections/Subsections/provisions shall be retained except that all reference to "covered institution" or "covered institutions" shall be replaced with "covered person" or "covered persons", respectively:
 1. Sections X804/4804Q and X809/4809Q;
 2. Subsection X807.4/4807Q.4, X807.5/4807Q.5 and X808.3/4808Q.3;
 3. Provisions under monetary penalty guidelines in Section X811/4811Q; and
 4. Section 46915, Subsec. 46915.9 and Section 4104N.
- ▶ If any provision, sections of this circular, or its application to any person or circumstance is held invalid, the other provisions or sections of this circular, and the application of such provision or section to other persons or circumstance shall not be affected thereby.
- ▶ This Circular shall take effect 15 calendar days after its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

[Editor's Note: BSP Circular No. 950 was published in The Philippine Star on 21 March 2017.]

Circular No. 951 provides for the Guidelines on Business Continuity Management.

BSP Circular No. 951 dated 20 March 2017

- ▶ The Monetary Board, in its Resolution No. 369 dated 2 March 2017, approved the following guidelines on business continuity management for Bangko Sentral ng Pilipinas (BSP)-supervised financial institutions (BSFIs) and amendments in the MORB and MORNBFI.
- ▶ Sections X182/4182Q/4182N/4194P/4197S/4176T on Business Continuity Management (BCM) are added to the MORB/MORNBFI, which provide for the need for BSFIs to have a comprehensive business continuity management process as an integral part of their operational risk management system.
- ▶ Subsections X182.1/4182Q.1/4182N.1/4194P.1/4197S.1/4176T.1 are added to the MORB/MORNBFI, which provide for the purpose, applicability and scope of the Business Continuity Management.
- ▶ Subsections X182.2/4182Q.2/4182N.2/4194P.2/4197S.2/4176T.2 are added to the MORB/MORNBFI, which provide for the definition of terms.
- ▶ Subsections X182.3/4182Q.3/4182N.3/4194P.3/4197S.3/4176T.3 are added to the MORB/MORNBFI, which provide for the roles and responsibilities of the Board of Directors and Senior Management, BCM Coordinator/Unit, BSFI personnel and Audit.
- ▶ Subsections X182.4/4182Q.4/4182N.4/4194P.4/4197S.4/4176T.4 are added to the MORB/MORNBFI, which require BSFIs to adopt a cyclical, process-oriented BCM framework.
- ▶ Subsections X182.5/4182Q.5/4182N.5/4194P.5/4197S.5/4176T.5 are added to the MORB/MORNBFI, which require that the policies, standards and processes be integrated into the BCM process.
- ▶ Subsections X182.6/4182Q.6/4182N.6/4194P.6/4197S.6/4176T.6 are added to the MORB/MORNBFI, which provide for Bangko Sentral supervisory enforcement actions.
- ▶ A footnote to section X182 / 4182Q/ 4182N / 4194P / 4197S / 4176T provides for the transitory provision. It provides that BSFIs shall comply with the foregoing standards on BCM within a period of one year from the effectivity of this issuance.
- ▶ This Circular shall take effect 15 days following its publication either in the Official Gazette or in a newspaper of general circulation in the Philippines.

[Editor's Note: BSP Circular 951 was published in Malaya on 27 March 2017.]

Circular No. 952 provides for the Disclosure of Domestic Remittance Charges by All BSP Supervised Entities with Domestic Remittance Transactions.

BSP Circular No. 952 dated 22 March 2017

- ▶ Pursuant to Monetary Board (MB) Resolution No. 370 dated 02 March 2017, the provisions of the MORB and the MORNBFI are amended.
- ▶ The provision of Subsection X263.2 of the MORB pertaining to fees on domestic remittance transaction of BSP Circular 928 dated 24 October 2016, shall be revised and transferred as the last paragraph of Section X906 of the MORB on disclosure of remittance charges and other relevant information. MORB Subsection X263.2 of BSP Circular 928 shall be deleted.

The amended Section X906 of the MORB section shall read as follows:

“Sec. X906. Disclosure of Remittance Charges and Other Relevant Information. It is the policy of the Bangko Sentral to promote the efficient delivery of competitively-priced remittance services by banks and other remittance service providers by promoting competition and the use of innovative payment systems, strengthening the financial infrastructure, enhancing access to formal remittance channels in the source and destination countries, deepening the financial literacy of consumers, and improving transparency in remittance transactions, consistent with sound banking practices.

XXX XXX XXX

In the case of domestic remittance transactions, all fees to the transactions shall be charged upfront by banks from the sender/remitter's end, with appropriate disclosure to the sender/remitter of the components of the fees being charged. This does not preclude the bank and/or other participants to the domestic remittance transaction from charging service fees. A domestic remittance transaction, for this purpose, is a transfer of funds between a sender/remitter and a beneficiary who are both within the Philippines, or between two accounts within the Philippines.”

- ▶ The provisions on disclosure of remittance charges and other relevant information under Sections 4921Q, 4660N and 4660S of the MORNBF are amended by this Circular to include as the last paragraph, the provision pertaining to the disclosure of domestic remittance charges is the same with Section X906 of the MORB as stated above.
- ▶ A footnote to Section X906 of the MORB; and Sections 4921Q, 4660N and 4660S of the MORNBF provides for the transitory provision. It provides that the BSFIs shall have until 27 April 2017 to comply with the provision of this Circular.
- ▶ This Circular shall take effect 15 days from publication in a newspaper of general circulation.

[Editor's Note: BSP Circular No. 952 was published in Business Mirror on 28 March 2017]

SEC Issuances

SEC MC No. 2 provides the schedule for the filing of 2017 annual reports of corporations registered with the SEC.

SEC Memorandum Circular No. 2 dated 24 February 2017 (superseded SEC MC No. 1 series of 2017)

- ▶ Audited Financial Statements/Reports
 1. For corporations (including branch offices, representative offices, regional headquarters and regional operating headquarters of foreign corporations) whose fiscal year ends on 31 December 2016, the filing of AFS shall be pursuant to a coding schedule depending on the last numerical digit of their SEC registration or license number; For those whose fiscal year ends on a date other than 31 December 2016, the filing of AFS shall be within 120 days from the end of their fiscal year;

2. For Broker Dealers, whose fiscal year ends on a date other than 31 December 2016, the filing of their Annual Audited Financial Report or SEC Form 52-AR shall be within 110 calendar days after the close of their fiscal year; For Broker Dealers whose fiscal year ends on 31 December 2016, the filing of SEC Form 52-AR depends on the last numerical digit of their registration number as prescribed by the Commission.
3. For listed companies, corporations whose securities are registered but not listed in PSE and other Public Companies covered under Sec. 17.2 of the SRC, the filing of AFS and SEC Form 17-A shall be within 105 calendar days after the end of their fiscal year.
4. Advance filing may be done by all corporations regardless of the last numerical digit of their registration or license number on or before 17 April 2017.
5. Late filings shall be accepted starting 29 May 2017 and shall be subject to applicable penalties computed from the date of the last day of filing based on the coding schedule.

The above schedules shall not apply to corporations whose AFS are being audited by the Commission on Audit (COA) provided that they attach to their AFS: (1) an affidavit signed by the President and Treasurer/Chief Financial Officer attesting to the fact that the company timely provided COA with the financial statements and supporting documents and that the audit of COA has just been concluded; and (2) a letter from COA confirming the information provided in the affidavit.

► General Information Sheet

1. For stock and non-stock corporations, the filing of GIS shall be within 30 calendar days from the date of the actual annual stockholders/members meeting;
2. For foreign corporations, the filing shall be within 30 calendar days from the anniversary date of the issuance of their respective SEC License.

Corporations covered by the foregoing schedule may file their annual reports thru any of the following options: (1) direct filing in the SEC Head Office and Extension Offices; (2) SEC Express Nationwide; (3) via courier/regular mail for reports without a return copy (the reckoning date of submission shall be the date of actual delivery of the courier to the SEC); (4) SEC Express Online Submission.

(Editor's Note: SEC MC No. 2, s. of 2017 was published in The Philippine Star and The Manila Standard on 3 March 2017.)

SEC MC No. 3 series of 2017, as approved by the Department of Finance, adopts a revised consolidated schedule of fees and charges to be imposed by the SEC.

SEC Memorandum Circular No. 3 series of 2017 dated 7 March 2017

This MC amends the old schedule under SEC Memorandum Circular No. 9 series of 2004 and all other circulars, rules, orders and issuances inconsistent with it.

(Editor's Note: SEC MC No. 3, s. of 2017 was published in The Philippine Star and The Manila Times on 11 March 2017.)

SEC MC No. 4 series of 2017 adopts a new term limit for Independent Directors of all listed, public and mutual fund companies.

SEC Memorandum Circular No. 4 series of 2017 dated 10 March 2017

In order to promote and reinforce board independence and to be consistent with recognized regional best practices, the SEC *En Banc* has resolved to amend its rules on the term limit of independent directors as follows:

- ▶ The maximum cumulative term shall be 9 years reckoned from 2012;
- ▶ After 9 years of service, the independent director shall be perpetually barred from re-election as such but may continue to qualify as a non-independent director;
- ▶ The company may retain an independent director who has served for 9 years provided that (a) the Board provides meritorious justifications; and (b) shall seek the shareholders' approval during the annual stockholders meeting.

(Editor's Note: SEC MC No. 4, s. of 2017, was published in The Philippine Daily Inquirer and The Manila Standard on 16 March 2017)

SEC MC No. 5 series of 2017 updates the *pro forma* Certification required from all Independent Directors.

SEC Memorandum Circular No. 5 series of 2017 dated 10 March 2017

The updated *pro forma* Certification now requires the following disclosures:

- ▶ Any pending criminal or administrative investigation or proceedings;
- ▶ Any positions held in Government-Owned and Controlled Corporations; and
- ▶ For those in government service, the required written permission or consent from the Head of Department/Agency.

(Editor's Note: SEC MC No. 5, s. of 2017 was published in The Philippine Daily Inquirer and The Manila Standard on 16 March 2017)

SEC MC Circular No. 6 series of 2017 provides for the Guidelines on the Submission of Annual Report of Broker Dealers on the measures it has taken to enforce the Rules on Segregation of Functions (otherwise known as the "*Chinese Wall Rules*") under Rule 34.11 of the 2015 Implementing Rules and Regulations of the SRC.

SEC Memorandum Circular No. 6 series of 2017 dated 17 March 2017

The annual report on Chinese Wall shall disclose the following information:

- ▶ The different units in the company and the persons in charge in the flow of information;
- ▶ Policies and procedures or system employed by the firm to prevent improper or unintended dissemination of market sensitive information and misuse or inappropriate flow of material nonpublic information;
- ▶ Any investigation, violation or attempt to violate *Chinese Wall* policies and procedures, including the action taken by the firm;
- ▶ Dissemination of the *Chinese Wall* policies and procedures to employees; and
- ▶ Any updates on the *Chinese Wall* policies and procedures.

The annual report shall be signed by the Associated Person and duly noted by the President. It shall be submitted to the SEC and SRO on or before the 15th day of March of the succeeding year. For 2017, the annual report shall be submitted not later than 31 March 2017.

Non-compliance with the *Chinese Wall* rules shall be considered a violation subject to the administrative sanctions provided under Sec. 54 of the SRC.

(Editor's Note: SEC MC No. 6, s. of 2017 was published in The Philippine Star and The Manila Times on 22 March 2017)

PEZA Update

The PEZA People's Freedom of Information Manual provides for the procedure in requesting for information from PEZA.

PEZA People's Freedom of Information Manual

- ▶ Background
 1. The President issued Executive Order (EO) No. 2 series of 2016 on 23 July 2016, operationalizing in the Executive Branch the people's constitutional right to information.
 2. The E.O. requires each government agency to adopt a People's Freedom of Information (FOI) Manual.

- ▶ Scope of right to information
 1. The right to information under the PEZA Manual covers information produced and kept under the control of PEZA, which is not publicly available through its website or other public sources.
 2. Except:
 - ▶ Information which cannot be released to the public under existing laws, jurisprudence, and the circularized inventory of exceptions issued pursuant to E.O No. 2.
 - ▶ Information protected under the Data Privacy Act of 2012, unless with consent of the private party concerned.

- ▶ Process flow
 1. The requesting party shall submit the following documentary requirements:
 - ▶ Accomplished FOI Request Form, including full name and updated contact information of the requesting party.
 - ▶ Photocopy of the requesting party's valid government-issued identification cardThe request shall be filed:
 - ▶ Personally with the FOI Receiving Officer at PPRG Building 5, 5th Floor, DOE-PNOC Complex, Energy Center, 34th Street, Bonifacio Global City, Taguig; or
 - ▶ Via email to foi@peza.gov.ph
 2. The requesting party shall receive a response from PEZA within 15 working days from receipt of the request. The PEZA may:
 - ▶ Approve or deny the request
 - a. In case of a denial, the Requesting Party may file a written appeal with the FOI Appeals Unit within 15 days from receipt of the notice of denial. The appeal shall be decided within 30 working days from its filing.
 - b. The requesting party may file a case in the proper courts upon exhaustion of administrative remedies.
 - ▶ Should the requested information need further details to identify or locate, the 15 working days will commence the day after the clarification from the requesting party is received.
 - ▶ PEZA shall inform the requesting party if an extension of time is needed (which shall not exceed 20 working days, unless exceptional circumstances warrant a longer period), under the following circumstances:
 - a. Inquiry requires extensive search of its records facilities; or
 - b. Examination of voluminous records; or
 - c. Occurrence of fortuitous events; or
 - d. Other analogous cases.

[Editor's note: The PEZA FOI Manual was issued by the PEZA Promotions and Public Relations Group (PPRG) dated 20 March 2017. Based on the FOI Manual, the same is effective immediately].

BLGF Opinions

BLGF Opinion No. 003-2017 dated 13 March 2017

A company is not required to secure a business permit from a city where it does not have any branch office, sales outlet, or warehouse, and its employees' presence therein is temporary and merely to fulfill its contractual obligation to its clientele.

A business permit fee is a regulatory fee imposed and collected for regulating, inspecting, and issuing licenses; such regulation and inspection cannot be done when the entity to be regulated and inspected has no branch office, sales outlet, or warehouse in said area to begin with.

Facts:

M Co. is an outsourcing company which provides temporary and outsourced services to various clients from different industries. Its head office is in Makati City. It has branches in Sta. Rosa, Laguna, Cavite, Taytay, Rizal, and satellite offices in Cebu City and Davao City. Its local business taxes accrue to Makati City based on 100% of its gross receipts.

W Co., one of M Co.'s client, maintains a warehouse in Cabuyao City where M Co. has no branch office, sales outlet, or warehouse. All of M Co.'s transactions with W Co. are being done directly at its head office in Makati City with HR support provided by M Co. Taytay, Rizal Branch.

W Co. and M Co. entered into a service contract where M Co. is to provide office operations and warehousing services in Cabuyao City. M Co. deployed four employees for that purpose.

W Co. required M Co. to secure a business permit from the local government of Cabuyao City.

Issue:

Is M Co. required to secure business permit from Cabuyao City where its client W Co. maintains a warehouse?

Ruling:

No. M Co. does not need to secure business permit from Cabuyao City since it has no branch office, sales outlet, or warehouse in said city to be regulated and inspected in the first place.

There is no need for the company to secure business permit from the local government concerned as the presence of its personnel in said locality is merely to fulfill its contractual obligation to its clientele on a temporary basis.

Section 147 of the Local Government Code provides that the imposition and collection of such regulatory fee (business permit fee) shall be commensurate with the cost of the regulation, inspection, and licensing before any person may engage in such businesses.

The absence of any branch office, sales outlet, or warehouse repudiates the requirement of securing business permit as there is no fixed business establishment to regulate, inspect, and to issue license to in the first place to justify such imposition. The regulating authority cannot impose its authority to regulate when the very subject of the regulation is non-existent.

However, the City of Cabuyao may impose an occupational fee on the four employees of M Co. pursuant to Section 147 of the Local Government Code in relation to Section 151 of the same Code, as may be authorized by a duly enacted ordinance of said city.

Assessment of real property tax should be made effective the year following the issuance of the Certificate of Occupancy permit.

BLGF Opinion (2nd Indorsement) dated 3 November 2016

Facts:

K Mall has requested that its real property assessment be made effective on year 2017, considering that the soft opening of the mall was on 10 December 2015 and the formal opening was in February 2016 only.

It is claimed that K Mall conducted a dry run or soft opening on 10 December 2015 with less than 10% tenant spaces occupied, no air-conditioning, and with only less than 20% lighting. The dry run was for a period of 60 days to test and determine back jobs and repairs needed.

The mall formally opened in February 2016 and a Certificate of Occupancy permit was issued on 10 February 2016 by the Office of the City Engineer.

Issue:

Is the real property tax (RPT) assessment reckoned from the date the building was completed or from the time it was issued a certificate of occupancy?

Ruling:

A new building, whether wholly completed or partly completed, but occupied by the owner, shall be subject to RPT beginning from the year following that in which the same was completed or rendered habitable.

Under Section 221 of the Local Government Code, the date of effectivity of the assessment or reassessment made after the first (1st) day of January of any year shall take effect on the first day (1st) of January of the succeeding year.

Item A, Section 6, Chapter IV of the Manual on Real Property Appraisal and Assessment Operation under Local Assessment Regulation No. 1-04 provides that the appraisal of the building shall be in accordance with the approved Schedule of Base Unit Construction Cost (SBUCC) for buildings, which is an integral part of the SFMV and supported by a copy of the approved building permit, building plan, and/or Certificate of Completion or Certificate of Occupancy permit from local official concerned, among others.

In sum, the real property assessment of K Mall can only be made no earlier than the issuance of the Certificate of Occupancy permit in 2016, and the resulting assessment thereon can only take effect in 2017, which is the year following the date of assessment.

If a taxpayer did not receive a final decision on its protest against the FAN, a Preliminary Collection Letter from the BIR reiterating the demand to pay the deficiency tax assessment previously made is deemed the final decision that is appealable to the CTA.

A deposit for future subscription of shares of stock is not subject to DST as there is no stock subscription yet that creates rights and obligations between the subscriber and the corporation.

Court Decisions

Organizational Change International Center for Learning, Inc. vs. Commissioner of Internal Revenue

CTA (Second Division) Case 8625, promulgated 10 February 2017

Facts:

Respondent CIR assessed Petitioner Organizational Change International Center for Learning, Inc. (OCICLI) for deficiency tax liabilities for taxable year 2009, including deficiency documentary stamp tax (DST) from its deposit for future subscription. OCICLI protested the Final Assessment Notice arguing that the deposit for future

stock subscription is not subject to DST. Instead of a Final Decision on Disputed Assessment (FDDA), OCICLI received from the CIR a Preliminary Collection Letter (PCL), prompting it to file a Petition for Review with the CTA.

The CIR argued, among others, that (1) the CTA has no jurisdiction since OCICLI appealed the Preliminary Collection Letter, not the FDDA as provided in the regulations, and (2) OCICLI is subject to DST on its deposit for future stock subscription.

Issues:

1. Is the PCL considered the final decision of the CIR that may be appealed by OCICLI to the CTA?
2. Is the deposit for future stock subscription subject to DST?

Ruling:

1. Yes. Since OCICLI did not receive an FDDA, the PCL received from the CIR reiterating the demand for the immediate payment of a tax deficiency assessment previously made, is equivalent to a denial of the taxpayer's request for reconsideration. The PCL is deemed the final decision of the CIR on a disputed assessment that is appealable to the CTA.

The CTA ruled that the PCL reiterated OCICLI's tax liabilities and requested for the payment of the same to avoid accumulation of interest and surcharges. The letter also indicated that if OCICLI failed to pay the same, the BIR would be constrained to serve and execute the administrative summary remedies to enforce the collection of the tax liabilities.

2. No, a deposit for future stock subscription is not subject to DST.

Citing the decision of the Supreme Court in *CIR vs. First Express Pawnshop Co., Inc.*, GR Nos. 172045-46, promulgated on 16 June 2009, the CTA held that a deposit for future subscription of shares of stock is not subject to DST as there is no subscription yet that creates rights and obligations between the subscriber and the corporation. A deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen.

In this case, the SEC did not yet approve OCICLI's application for increase in capital stock. Future subscription to an increase in capital stock is not an original issue of shares of stock nor is it a sale or transfer of shares of stock subject to DST under Sections 175 and 176 of the Tax Code.

To determine the fair market value of unlisted shares of stock, the audited financial statements duly certified by an independent public accountant "nearest to the date of sale" shall be utilized.

In a *bona fide* sale transaction where the fair market value of the shares of stock is lower than the consideration, no donor's tax is due. If donor's tax was paid, the erroneously paid tax can be subject to a refund.

Commissioner of Internal Revenue vs. Sara Lee Kiwi Holdings, LLC.

CTA (*En Banc*) Case 1396, promulgated 13 February 2017

Facts:

Respondent Sara Lee Kiwi Holdings, LLC (Sara Lee), a US corporation, filed a claim for refund of erroneously paid donor's tax on its sale of shares to S.C. Johnson & Sons, Inc.

On April 4, 2011, Sara Lee sold its shares of stock in Sara Lee Household Care Philippines to S.C. Johnson for P235.2 Million and thereafter filed a capital gains tax (CGT) return showing a net capital loss totaling P192.7 Million. It also filed a donor's tax return and paid the tax due amounting to P57.8 Million, which is computed based on 30% of the capital loss.

On 11 June 2012, the parties executed an Amendment Agreement increasing the purchase price to P285.8 Million. Sara Lee filed a claim for refund of the erroneously paid donor's tax in the amount of P15.1 Million. Subsequently, it then amended its application requesting the refund of the entire donor's tax paid amounting to P57.8 Million. Due to the BIR's inaction and to toll the two-year prescriptive period, Sara Lee filed a Petition for Review at the CTA.

The CTA Second Division ordered the grant of the refund claim since the fair market value of the shares of stock based on its 30 June 2011 audited financial statements (AFS) amounting to P21.8 Million did not exceed the value of the consideration at P285.8 Million. The CTA Second Division ruled that Sara Lee's payment of donor's tax was deemed erroneous.

Unconvinced, the CIR filed a Petition for Review at the CTA *En Banc*. The CIR insisted that based on RR 6-08, the fair market value of the shares sold should be based on the book value based on the AFS nearest the date of sale. Since the shares were sold in April 2011 and its fiscal accounting period ended on 30 June 2011, the book value of the shares should be determined based on the 2010 AFS as the valuation based on the 2011 AFS was not yet existent at the time of transaction. The CIR noted that the book value of the shares in the 2011 AFS had already drastically dropped.

Issues:

1. For purposes of determining the fair market value of shares of stock under RR 6-08, what is the audited financial statements 'nearest to the date of sale'?
2. Is the share sale transaction subject to donor's tax?

Ruling:

1. Under RR 6-08, the AFS duly certified by an independent public accountant and "nearest to the date of sale" shall be utilized for purposes of determining the fair market value of shares not listed and traded in the local stock exchange.

In this case, the AFS for the period ending 30 June 2011 (not the AFS for the period ending 30 June 2010) is the nearest to the date of sale, which was executed in April 2011.

The unavailability or non-existence of the AFS nearest to the date of sale, as argued by the BIR, does not necessarily warrant reference to the AFS for the preceding fiscal year or calendar year for the fair market value of the subject shares of stock. Under RR 6-08, even the resort to tentative financial statements nearest to the date of sale can be had, subject to a later adjustment in the book value of the shares of stock indicated in the audited financial statements for any difference.

2. No. The CTA *En Banc* sustained the CTA Second Division's ruling that Section 100 of NIRC, as amended, imposing donor's tax on transfers for less than adequate and full consideration, is not applicable since the fair market value of the shares of stock did not exceed the value of the consideration.

In a *bona fide* sale transaction where the fair market value of the shares of stock is lower than the consideration, no donor's tax is due and if donor's tax is paid, the erroneously paid tax can be subject of a refund.

[Editor's Note: RR 6-08 was amended by RR 6-13, which adopted the Adjusted Net Asset Method in the determining the value of the shares of stock where assets and liabilities are adjusted to fair market values.]

About SGV & Co.

SGV is the largest professional services firm in the Philippines that provides assurance, tax, transaction and advisory services. The insights and quality services we deliver help build trust and confidence in the capital markets and in economies the world over. We develop outstanding leaders who team to deliver on our promises to all of our stakeholders. In so doing, we play a critical role in building a better working world for our people, for our clients and for our communities. SGV & Co. is a member firm of Ernst & Young Global Limited.

EY refers to the global organization, and may refer to one or more, of the member firms of Ernst & Young Global Limited, each of which is a separate legal entity. Ernst & Young Global Limited, a UK company limited by guarantee, does not provide services to clients.

For more information about our organization, please visit www.ey.com/PH.

© 2017 SyCip Gorres Velayo & Co.
All Rights Reserved.
APAC No. 10000230
Expiry date: no expiry

SGV & Co. maintains offices in Makati, Cebu, Davao, Bacolod, Cagayan de Oro, Baguio, General Santos and Cavite.

For an electronic copy of the Tax Bulletin or for further information about Tax Services, please visit our website www.ey.com/ph

We welcome your comments, ideas and questions. Please contact Victor C. De Dios via e-mail at victor.c.de.dios@ph.ey.com or at telephone number 8910307 loc. 7929 and Reynante M. Marcelo via e-mail at reynante.m.marcelo@ph.ey.com or at telephone number 894-8335 loc. 8335.

This publication contains information in summary form and is therefore intended for general guidance only. It is not intended to be a substitute for detailed research or the exercise of professional judgment. Neither SGV & Co. nor any other member of the global Ernst & Young organization can accept any responsibility for loss occasioned to any person acting or refraining from action as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.